IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

MFA.No. 655 of 2001(B)

MVOP.2145/1997 of SPL.COURT FOR EC ACT CASES &MACT,TSR
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APPELLANT: PETITIONER

KUMARAN, S/O. AYYAPPAN,
KANANATHIL HOUSE,
ARIYAMPADAM, P.O. MUINDATHIKODE,
(VIA) WADAKKANCHERRY, THRISSUR DIST.

BY ADV. SRI.P.V.CHANDRA MOHAN
SRI.T.VENUGOPALAN

RESPONDENTS: RESPONDENTS
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1. K.S.R.T.C. REP.BY GENERAL MANAGER,
K.S.R.T.C, THIRUVANANTHAPURAM.

2. JOSE, S/O. VAREED, PUTHUR HOUSE,
KUNNATHANGADI, VELUTHUR,
THRISSUR DIST.

BY ADV. SHRI.JOHNSON P.JOHN, SC, KSRTC

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 12/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.655 OF 2001

Dated 12th July, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner met with a motor accident while he was riding bicycle along Shornur-Thrissur public road when his cycle was hit by a stage carriage bus driven by the second respondent and owned by the first respondent. He claimed a compensation of Rs.3,01,500/=. The Tribunal, after finding 40% contributory negligence on the part of the claimant, awarded only Rs.47,856/=. It is seriously contended that the finding of contributory negligence is not correct. Even the claimant did not go to the box to prove that second respondent was negligent. No other documentary evidence was also adduced to show that second respondent was negligent. F.I.R shows that case was registered against the second respondent and on the basis of the preliminary finding charge sheet was issued. Ext.A4 is the draft charge (final report), but, it has come out in evidence that the appellant was proceeding on his bicycle along the eastern side of the road from south to north. The bus was coming from the northern side and it was going along the correct side. The bicycle was pedalling along the wrong side. Ext.A2 scene mahazar would reveal that the accident spot lies to the west of the eastern end of the

tarred portion and it is at a distance of 2.40 metres towards west from the eastern end of the tarred portion. The tarrred portion of the road is having a width of 6.69 metres. That means, the appellant was proceeding along the eastern half of the road, but, very close to the midline. That shows that cyclist was negligent. But, at the same time, Tribunal found that bus was coming in a very high speed and if the bus was coming slowly, driver could have averted the accident. Therefore, 40% contributory negligence was fixed on the part of the cyclist and 60% on the driver of the bus. Considering the evidence adduced in this case, we see no ground to interfere with the above finding.

2. Even though it was claimed that the appellant was a headload worker earning Rs.4,000/= per month, no evidence was adduced. The incident occurred in 1997. Tribunal fixed Rs.1,500/= as the monthly income. We see no ground to change the same. Medical certificate issued from the Government Medical College Hospital, Thrissur shows that he had 20% permanent disability. The certificate reads as follows:

> "This is to certify that Kumaran, aged 38 years was admitted in Medical

College, Trichur on 3.10.97, following hit by a bus while riding a cycle.

Patient was unconscious. Bleeding (left) ear facio maxillary injury present.

CT scan showed fracture skull intracranial air and brain contusion. He was managed conservatively and was discharged on 22.10.97.

Patient now has post traumatic head ache and vertigo (5%).

Mild loss left forehead (5%)

Hearing loss:-

Severe left side.

Mild right side. (Audiogram) (10%)

Patient has loss of teeth.

The permanent disability amounts twenty percentage (20%).”

Tribunal was of the view that for post traumatic head ache and vertigo 5% disability assessed is reasonable, but, for memory loss also 5% is assessed which is duplicate. 10% was assessed for hearing loss as per Audiogram. Apart from the above, he has also lost teeth. We are of the opinion that there is no reason to change the percentage of disability assessed by the doctor. If that be so, compensation payable will be Rs.57,600/= (Rs.1,500 x 12 x 16 x $\frac{20}{100}$). The Tribunal has calculated Rs.41,760/= for

disability. So, additional compensation under that head will be 15840/=. After deducting 40% for contributory negligence, compensation payable will be Rs.9,504/= (rounded to Rs.9,500/=). We see no ground to enhance the compensation granted under other heads. The above amount of Rs.9,500/= should be deposited by the first respondent KSRTC with 7% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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